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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-84097; File No. SR-NYSE-2018-40)

September 12, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Price List

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 31, 2018, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange to amend its Price List to (1) modify the Tier 1 and Tier 3 Adding Credit requirements; (2) amend its routing fees; (3) introduce a new incremental step up tier for Supplemental Liquidity Providers (“SLP”); and (4) modify the Tier 1 and Tier 2 Adding Tier and SLP Provide Tier requirements for securities traded pursuant to Unlisted Trading Privileges (“UTP”) (Tapes B and C). The Exchange proposes to implement these changes to its Price List effective September 4, 2018. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) modify the Tier 1 and Tier 3 Adding Credit requirements; (2) amend its routing fees; (3) introduce a new incremental SLP step up tier; and (4) modify the Tier 1 and Tier 2 Adding Tier and SLP Provide Tier requirements for UTP Securities (Tapes B and C).

The Exchange proposes to implement these changes to its Price List effective September 4, 2018.

Adding Tiers

The Exchange currently provides an equity per share credit of \$0.0022 per transaction for all orders, other than MPL and Non-Display Reserve orders, for transactions in stocks with a share price of \$1.00 or more when adding liquidity to the Exchange if the member organization (1) executes an average daily trading volume

(“ADV”) that adds liquidity to the Exchange during the billing month (“Adding ADV”)⁴ that is at least 1.10% of NYSE consolidated average daily volume (“CADV”), excluding liquidity added by a Designated Market Maker (“DMM”), and (2) executes MOC and LOC orders of at least 0.12% of NYSE CADV.

The Exchange proposes to modify the Adding ADV requirement for the Tier 1 Adding Credit to require an Adding ADV, excluding liquidity added by a DMM, of at least 1.20% of NYSE CADV.

Similarly, the Exchange currently provides an equity per share credit of \$0.0018 per transaction for all orders, other than MPL and Non-Display Reserve orders, that add liquidity to the NYSE if the member organization (i) has Adding ADV that is at least 0.35% of NYSE CADV, and (ii) executes market at-the-close (“MOC”) and limit at-the-close (“LOC”) of at least 0.05% of NYSE CADV.

The Exchange proposes to modify the Adding ADV requirement for the Tier 3 Adding Credit to require an Adding ADV that is at least 0.40% of NYSE CADV.

Routing Fees

The Exchange proposes the following modifications to its routing fees.

The Exchange currently charges a \$0.0030 per share fee to route in Tape A securities. The Exchange proposes to charge \$0.0035 per share fee to route and a lower \$0.0030 per share fee if the member organization has adding ADV in Tapes A, B, and C combined that is at least 0.20% of Tapes A, B and C CADV combined.

For orders in UTP Securities that are routed, the Exchange currently charges a fee

⁴ Footnote 2 to the Price List defines ADV as “average daily volume” and “Adding ADV” as ADV that adds liquidity to the Exchange during the billing month. The Exchange is not proposing to change these definitions.

of \$0.0005 per share for executions in securities with a price at or above \$1.00 that route to and execute in an auction on the Exchange's affiliate NYSE American. For executions in securities with a price at or above \$1.00 that route to and execute in an auction on an Away Market⁵ other than NYSE American, the Exchange charges a fee of \$0.0010 per share, and a fee of \$0.0030 per share for all other executions.⁶

The Exchange proposes to charge a fee of \$0.0035 per share for all other executions in securities with a price at or above \$1.00. The Exchange also proposes a fee of \$0.0030 if the member organization has adding ADV⁷ in Tapes A, B, and C combined that is at least 0.20% of Tapes A, B and C CADV combined.

Incremental SLP Step Up Tier

The Exchange proposes a new, incremental SLP step up tier designated the "Incremental SLP Step Up Tier" that would provide an SLP a credit in addition to the tiered or non-tiered SLP credit up to a maximum combined credit when adding liquidity to the NYSE with orders (other than MPL orders or Retail orders) in securities with a per share price of \$1.00 or more.

Specifically, the Exchange would provide a credit of \$0.0002 to a SLP in addition

⁵ The term "Away Market" is defined in Rule 1.1(ff) to mean any exchange, alternative trading system ("ATS") or other broker-dealer (1) with which the Exchange maintains an electronic linkage, and (2) that provides instantaneous responses to orders routed from the Exchange.

⁶ For securities priced below \$1.00 that route to and execute on an Away Market, the Exchange charges a fee of 0.30% of the total dollar value of the transaction for executions in an Away Market auction as well as all other executions. The Exchange proposes no changes to these routing fees.

⁷ The Exchange proposes to use "adding ADV" in connection with the routing fees for UTP Securities to distinguish it from the defined term "Adding ADV" that only applies to Tape A securities. See NYSE Price List, notes 2 & 4 and note 3, supra.

to the SLP's tiered or non-tiered credit for adding displayed liquidity provided that such combined credits do not exceed \$0.0031 per share, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization shall not be aggregated), and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.15% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018.

For example, assume a SLP adds liquidity of 0.50% in the second quarter of 2018, which qualifies them for the SLP Tier 2 adding credit of \$0.0026 per share, based on the SLP Tier 2 adding requirement of 0.45%. If that SLP adds liquidity in the billing month of at least 0.65%, or 0.15% above their baseline, that SLP would qualify for the Incremental Step Up credit of \$0.0002 in addition to the SLP Tier 1A credit of \$0.00275 based on the SLP Tier 1A requirement of 0.60%, for a combined SLP credit of \$0.00295 in that billing month. Further assume that same SLP adds liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined, which would receive an additional \$0.0001 per share. That same SLP would then qualify for a combined credit of \$0.00305 (\$0.00275 Tier 1A credit plus the \$0.0002 Incremental Step Up credit plus the \$0.0001 credit from Tape B and C).

If in the following month, assume that same SLP adds liquidity in the billing month of at least 0.90%, then that SLP would qualify for an Incremental Step Up credit

of \$0.0002, as well as the SLP Tier 1 credit of \$0.0029, based on the SLP Tier 1 requirement of 0.90%, for a combined SLP credit of \$0.0031 in that billing month. If that SLP in that same billing month adds liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined, the SLP would qualify to receive an additional \$0.00005 per share for SLP Tier 1. However, since the combined credit would be \$0.00315, the combined credit would be capped at \$0.0031.

Tier 1 and Tier 2 Adding Credits for UTP Securities

The current Tier 1 Adding Credit for UTP Securities offers a per tape credit of \$0.0026 per share (\$0.0025 if an MPL order) on a per tape basis for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the member organization has at least 0.05% of Adding CADV in Tape B or C. For purposes of qualifying for this tier, the 0.05% of Adding CADV could include shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization.

The Exchange proposes to require at least 0.10% of Adding CADV in Tape B or C in order to qualify for this credit.

Similarly, the current Tier 2 Adding Credit offers a per tape credit of \$0.0023 per share for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the member organization has at least 0.01% of Adding CADV in Tape B or C. For purposes of qualifying for this tier, the 0.01% of Adding CADV could include shares of both an SLP-Prop and an SLMM⁸ of the same or an

⁸ Under Rule 107B, a SLP can be either a proprietary trading unit of a member organization (“SLP-Prop”) or a registered market maker at the Exchange (“SLMM”). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of

affiliated member organization.

The Exchange proposes to require at least 0.03% of Adding CADV in Tape B or C in order to qualify for this credit.

SLP Provide Tiers for UTP Securities

Current SLP Provide Tier 2 provides a \$0.0029 per share credit per tape in an assigned UTP Security for SLPs adding displayed liquidity to the Exchange if the SLP (1) adds liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.01% per tape, and (2) meets the 10% average or more quoting requirement in 250 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B, and (3) meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B.

The Exchange proposes to require SLPs to add liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.03% per tape. The Exchange would also require SLPs to meet the 10% average or more quoting requirement in 200 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B. The other requirement for qualifying for this tier would remain unchanged.

Current SLP Provide Tier 1 offers a \$0.0032 per share credit per tape in an assigned UTP Security for SLPs adding displayed liquidity to the Exchange if the SLP (1) adds liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.05% per tape, and (2) meets the 10% average or more quoting requirement in 500 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B, and (3) meets the 10% average or more quoting requirement in an assigned UTP Security

adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

pursuant to Rule 107B.

The Exchange proposes to modify the adding liquidity requirement to require SLPs to add liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.10% per tape. The remaining requirements for qualifying for this tier would remain unchanged.

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The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Adding Tiers

The Exchange believes that increasing the Adding ADV requirement for the Tier 1 Adding Credit and the Tier 3 Adding Credit is reasonable, equitable and not an unfairly discriminatory allocation of fees because it would encourage additional liquidity on the Exchange and because members and member organizations benefit from the substantial

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) & (5).

amounts of liquidity that are present on the Exchange. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because it would continue to encourage member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed changes will encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange. Moreover, the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all qualifying member organizations, including Floor brokers, that submit orders to the NYSE and add liquidity to the Exchange.

Routing Fees

The Exchange believes that its proposed routing fees for Tape A and UTP Securities are a reasonable, equitable and not an unfairly discriminatory allocation of fees because the fee would be applicable to all member organizations in an equivalent manner.

The proposed fees for routing shares Tape A securities are also reasonable, equitable and not unfairly discriminatory because they are consistent with fees charged on other exchanges. In particular, the Exchange's proposal to charge \$0.0035 per share fee to route in Tape A securities is consistent with the fees to route charged on other exchanges.¹¹ The Exchange's proposal to charge a lower fee of \$0.0030 per share fee if the member organization has adding ADV in Tapes A, B, and C combined that is at least 0.20% of Tapes A, B and C CADV combined is reasonable, equitable and not unfairly

¹¹ See page 14 of the NYSE Arca, Inc. ("NYSE Arca") Equities Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

discriminatory because it is in line with the fees charged on NYSE Arca, which charges a fee of \$0.0030 for ETP Holders and Market Makers meeting the requirements of Tier 1, Tier 2 and Tier 3.

Further, the proposal to charge \$0.0035 for all other executions in UTP Securities priced at or above \$1.00 that route to and execute on Away Market auctions is reasonable, equitable and not unfairly discriminatory because it is consistent with fees charged on other exchanges.¹² The proposal to charge \$0.0030 if the member organization has adding ADV in Tapes A, B, and C combined that is at least 0.20% of Tapes A, B and C CADV combined is reasonable, equitable and not unfairly discriminatory because it is in line with the fees charged on NYSE Arca, which charges a fee of \$0.0035 for Basic Rates (applicable when tier rates do not apply).

Incremental SLP Step Up Tier

The Exchange believes that the proposal to introduce a new incremental SLP Step Up Tier is reasonable because it provides SLPs as well as SLPs that are also DMMs with added incentive to bring additional order flow to a public market. In particular, the Exchange believes that the new tier will provide greater incentives for more active SLPs to add liquidity to the Exchange, to the benefit of the investing public and all market participants. Moreover, offering an additional credit, up to a \$0.0031 per share maximum, in addition to the SLP's tiered or non-tiered credit for adding displayed liquidity for SLPs that add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.15% of NYSE CADV over that SLPs' second

¹² See id.; see also https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

quarter of 2018 adding liquidity and that meet the SLP quoting requirements would provide an incentive for less active SLPs to add displayed liquidity in order to meet the SLP quoting requirements, thereby contributing to additional levels of liquidity to a public exchange, which benefits all market participants. Finally, the Exchange believes that the proposed tier is equitable and not unfairly discriminatory because it would apply equally to all SLPs that would submit additional adding liquidity to the Exchange in order to qualify for the additional credit.

UTP Securities

The Exchange believes that increasing the Adding ADV requirement for Tier 1 and Tier 2 Adding Credits per share for transactions in UTP Securities with a per share stock price of \$1.00 or more when adding liquidity is reasonable because it would further contribute to incenting member organizations to provide additional amounts of liquidity on the Exchange. The Exchange believes that the proposed modifications to the Tier 1 and Tier 2 Adding Credit requirement are thus reasonable, equitable and not unfairly discriminatory because all member organizations would benefit from such increased levels of liquidity. For the same reasons, the Exchange believes that increasing the SLP Provide Tier 1 and Tier 2 adding liquidity requirements is also reasonable, equitable and not unfairly discriminatory because the proposed requirements will encourage the SLPs to add liquidity to the market in UTP Securities, thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹³ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would foster liquidity provision and stability in the marketplace, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition. The Exchange also believes that the proposed rule change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing

¹³ 15 U.S.C. 78f(b)(8).

practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2018-40 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2018-40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

